

Mortgage Loan Originator and Seller Financing FAQs

The following Mortgage Loan Originator and Seller Financing FAQs discuss the Department of Insurance and Financial Services analysis of licensing requirements under the Mortgage Loan Originator Licensing Act and the Mortgage Brokers, Lenders, and Servicers Licensing Act. Answers provided in these FAQs do not include other restrictions that may exist in the Michigan Occupational Code or other state or federal laws or regulations.



What is the Secure and Fair Enforcement for Mortgage Licensing Act of 2008?



The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) is a federal statute that was signed into law on July 30, 2008. In part, it sets minimum standards for the following: mortgage loan originator state licensing and regulation; uniform license applications and reporting requirements; a comprehensive licensing database; and the registration of mortgage loan originators employed by federal depository institutions and their subsidiaries.



Have Rules to the SAFE Act been promulgated?



Yes. A SAFE Act Final Rule was promulgated with an effective date of August 29, 2011, and can be found at <http://www.gpo.gov/fdsys/pkg/FR-2011-06-30/pdf/2011-15672.pdf>. This Rule was promulgated to clarify interpretations of the SAFE Act, and has the same effect as law.



What is the Mortgage Loan Originator Licensing Act?



The Mortgage Loan Originator Licensing Act (MLOLA) is the Michigan statute that became effective on July 31, 2009 to bring Michigan into compliance with the federal SAFE Act. It gives the Director of the Department of Insurance and Financial Services (DIFS) certain powers to license, examine, and regulate mortgage loan originators doing business in Michigan.



What is the relationship of the SAFE Act to the MLOLA?



The MLOLA is the Michigan statute enacted in conformance with the SAFE Act. The SAFE Act sets minimum standards for individual state statutes, including Michigan's.

Individual state statutes may be stricter than the SAFE Act. For example, the SAFE Act prescribes a 7-year period previous to the date of license application in which a mortgage loan originator license shall not be issued to an individual who has been convicted of a felony. The MLOLA prescribes a stricter 10-year period.

Q

What is the definition of a “residential mortgage loan”?

A

Under both the SAFE Act and MLOLA, a “residential mortgage loan” is similarly defined to mean any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling or on land on which a person intends to construct a dwelling. A “dwelling” is defined as a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.

Q

Is the definition of “residential mortgage loan” in the MLOLA identical to the definition of “mortgage loan” in the Mortgage Brokers, Lenders, and Servicers Licensing Act (MBLSLA)?

A

No. Although the definitions are similar, the MLOLA includes loans secured by mobile or manufactured homes, while the MBLSLA does not include these transactions unless the home is affixed to real property.

Q

Is a purchase-money mortgage a residential mortgage loan subject to the MLOLA?

A

Yes. A purchase-money mortgage is a mortgage given by the buyer of property to the seller, to secure the balance of the purchase price with the property being sold. Origination of a purchase-money residential mortgage loan is subject to MLOLA requirements.

Q

Is a “land contract” a residential mortgage loan subject to the MLOLA?

A

Yes. HUD’s response to public comments on the SAFE Act Final Rule clearly states that “residential mortgage loans” include installment sales contracts (*i.e.*, land contracts).

Q

What does “originate” mean under the MLOLA?

A

“Originate” means, for compensation or gain or the expectation of compensation or gain, taking a residential mortgage loan application or offering or negotiating the terms of a residential mortgage loan.

Q

What is meant by “engaged in the business of a mortgage loan originator”?

A

The SAFE Act Final Rule states that not every person who acts as a “loan originator” must be licensed, but licensure is required for those persons who “engage in the business” of loan origination.

The Final Rule states that an individual is engaged in the business of a mortgage loan originator if he or she habitually or repeatedly in a commercial context: *

- Takes a residential mortgage loan application; or,
- Offers or negotiates the terms of a residential mortgage loan for compensation or gain; or
- Otherwise holds him or herself out to the public to be in the business of a mortgage loan originator.

* “Commercial context” is defined in the next FAQ.

Q

What is meant by “commercial context”?

A

Use of the term “commercial” in this instance does not mean commercial real estate. The SAFE Act Final Rule defines “commercial context” as activity for the purpose of obtaining anything of value for himself or herself, or for an entity or individual for which the individual acts, rather than exclusively for public, charitable or family purposes.

Q

What is meant by “offer or negotiate terms for compensation or gain”?

A

The SAFE Act Final Rule defines “offers or negotiates terms for compensation or gain” as follows:

- “(1)(A) Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms;
(B) Communicates directly or indirectly with a borrower, or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms; or
(C) Recommends, refers, or steers a borrower or prospective borrower to a particular lender or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the borrower or prospective borrower, and
(2) Receives or expects to receive payment of money or anything of value in connection with the activities described above or as a result of any residential mortgage loan terms entered into as a result of such activities.”

Q

Does the MLOLA provide an exemption for a maximum number of residential mortgage loan transactions that may be originated before an individual is required to be licensed as a mortgage loan originator? (The Safe Act Final Rule refers to this as a de minimis exemption.)

A

No, such an exemption does not exist. Generally, origination of one residential mortgage loan requires licensure under the MLOLA. However, certain loan origination transactions may be exempt from the licensure requirements of the MLOLA as discussed below. In addition, the SAFE Act Final Rule provides limited licensing exceptions for certain transactions. Please review all of the Mortgage Loan Originator and Seller Financing FAQs below to determine if you qualify for a limited licensing exemption.

Q

Is every person who originates a mortgage loan involving residential property required to be licensed under the MLOLA?

A

No. The MLOLA specifically provides exemptions for:

- A registered mortgage loan originator, when acting for a depository institution, a subsidiary of a depository institution that is owned and controlled by that depository institution and is regulated by a federal banking agency, or an institution regulated by the farm credit administration;
- An individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of that individual;
- An individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as his or her residence; and,
- A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, mortgage broker, or other mortgage loan originator or by any agent of a lender, mortgage broker, or other mortgage loan originator.

Q

Under the SAFE Act Final Rule, a mortgage loan originator license is not required to originate certain non-seller financing* transactions. Which transactions are included in this exemption?

A

The SAFE Act Final Rule states that a mortgage loan originator license is not required for the following non-seller financing transactions:

- An employee of a government agency who engages in the business of a mortgage loan originator pursuant to his or her official duties as an employee of that government agency (e.g., Michigan State Housing Development Authority);
- An employee of a bona-fide nonprofit organization (see definition below) who engages in the business of a mortgage loan originator pursuant to his or her duties as an employee of that organization; or
- An individual volunteering his or her time to a bona-fide nonprofit organization (see definition below) who engages in the business of mortgage loan origination under the supervision and direction of management of that organization.

DIFS has taken the position that origination of the above-mentioned transactions generally does not require licensure under the MLOLA, in accordance with the SAFE Act Final Rule.

* “Seller financing” is defined later in this document.

Q

What is a bona-fide nonprofit organization?

A

“Bona-fide nonprofit organization” under the SAFE Act Final Rule means an organization that demonstrates to the satisfaction of the applicable regulator that the organization meets all of the following:

- (a) Has the status of a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986;
- (b) Promotes affordable housing or provides homeownership education, or similar services;
- (c) Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;
- (d) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;
- (e) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients; and
- (f) Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.

Q

What is the definition of “seller financing”?

A

Seller financing is the activity of an individual or entity that owns and subsequently sells a dwelling subject to the MLOLA, which is financed by the seller through a residential mortgage loan as defined by the MLOLA.

Q

What types/level of seller financing activity would subject a seller to the MLOLA’s licensing requirement?

A

Mortgage loan origination involving a residential mortgage loan as defined by the MLOLA for personal, family, or household purposes on a dwelling located in the state of Michigan generally subjects the seller to the licensing requirements of the MLOLA. However, certain seller financing transactions may not require licensure under the MLOLA, as discussed in the next FAQ.

Q

Under the SAFE Act Final Rule or HUD’s response to comments on the Final Rule, what specific seller financing transactions do not require a mortgage loan originator license?

A

The SAFE Act Final Rule, or HUD’s response to public comments on the Rule, states that a mortgage loan originator license is not required for the following seller financing transactions **provided that such activity is not habitual**:

- An individual who sells his or her own residence in a seller financed transaction, and pursuant to the transaction, offers or negotiates the terms of a residential mortgage loan;
- An individual who sells his or her vacation home in a seller financed transaction and, pursuant to the transaction, offers or negotiates the terms of a residential mortgage loan;
- An individual who sells an inherited property in a seller financed transaction, and, pursuant to the transaction, offers or negotiates the terms of a residential mortgage loan;
- An individual who sells his or her dwelling to an immediate family member (spouse, child, sibling, parent, grandparent, grandchild, step parent, stepchildren, stepsiblings, and adopted relationships) in a seller financed transaction and, pursuant to the transaction, offers or negotiates the terms of a residential mortgage loan.

DIFS has taken the position that origination of the above-mentioned transactions does not require licensure under the MLOLA unless the number or frequency of the transactions indicates that the individual appears to be engaged in the business of mortgage loan origination. As discussed in the next FAQ, DIFS will presume that an individual is “engaged in the business” of origination if four or more transactions are originated in a calendar year.

Q

In a seller financing transaction, does the MLOLA provide an exemption for a maximum number of residential mortgage loan transactions that may be originated before an individual is required to be licensed as a mortgage loan originator?

A

No, such an exemption does not exist. However, the SAFE Act Final Rule states that an individual generally is not “engaged in the business of a loan originator” when an individual acts as a loan originator in providing financing for the sale of a property owned by that individual, provided the individual does not engage in such activity with habitualness.

In considering whether activity is “habitual,” DIFS will generally apply the following standard. Unless other evidence to the contrary indicates that an individual is “engaged in the business” of loan origination, during a 12-month period from January 1 to December 31, an individual will not be considered to be engaged in the business of mortgage loan origination if the individual is not engaged in any activity under the MLOLA except seller financing transactions AND the individual originates three or fewer seller financed mortgage loan transactions. If four or more transactions are originated within such 12-month period, DIFS will presume the individual is “engaged in the business” and licensure as a mortgage loan originator is therefore required. Note that under the MLOLA, a mortgage loan originator must be a natural person.

Q

Are real estate brokers or salespersons who assist in arranging financing in seller financing transactions required to be licensed as mortgage loan originators?

A

A real estate broker or salesperson who does not engage in the business of a mortgage loan originator is not required to be licensed as a mortgage loan originator.

A real estate broker or salesperson who acts as a mortgage broker only in connection with a real estate sale and acts without additional compensation beyond the customary commission on the real estate sale, is not required to be licensed as a mortgage loan originator.

A real estate broker or salesperson is required to be licensed as a mortgage loan originator if he or she is compensated for the origination of the mortgage loan (i.e., fees in excess of the normal real estate commission are charged for handling a seller financing transaction). Under Section 3(1)(ii) of the MLOLA, MCL 493.133(1)(ii), individuals performing real estate brokerage or salesperson activities are exempt from the definition of a mortgage loan originator “... unless the person or entity is compensated by a lender, a mortgage broker, or other loan originator or by any agent of such lender, mortgage broker, or other loan originator.”

Q

Can a seller who regularly provides seller financing for residential properties satisfy the MLOLA licensing requirements by simply working through a real estate broker or salesperson who is a licensed mortgage loan originator?

A

If the real estate broker or salesperson receives no additional compensation beyond the customary commission on the real estate sale, a license under the MLOLA or MBLSLA is not required for that transaction.

If the real estate broker or salesperson receives additional compensation beyond the customary commission on the real estate sale, the answer is “YES” if the real estate broker or salesperson is licensed as a mortgage loan originator under the MLOLA and is also licensed as a mortgage broker under the MBLSLA.

The answer is “NO” if the real estate broker or salesperson is not licensed as both a mortgage loan originator under the MLOLA and a mortgage broker under the MBLSLA. HUD’s response to public comments on the SAFE Act Final Rule states that a seller who finances the sale of his or her own property avoids the issue of licensing by retaining the services of a licensed loan originator and having that individual carry out the functions that constitute engaging in the business of a loan originator. However, statutory language in the MBLSLA prohibits this activity unless the real estate broker or sales person is not only licensed as a mortgage loan originator, but is also licensed as a mortgage broker under the MBLSLA.

Q

Does a seller providing the seller financing need to be licensed as a mortgage lender under the MBLSLA?

A

The seller providing the seller financing is a “mortgage lender” as defined under Section 1a(q) of the MBLSLA. The seller must be licensed as a lender unless a licensing exemption in Section 25 of the MBLSLA applies.

An exemption for lenders with limited activity is provided in Section 25(g), which states:

“This act does not apply to the following:

(g) A mortgage lender that in the aggregate with any affiliates makes 10 or fewer mortgage loans in a 12-month period from January 1 to December 31.”

Seller Financing Examples

Note: All examples below involve residential mortgage loans and meet the MLOLA definition of “originate.”

- A. Property owner A owns forty acres of farm land and sells three one-acre lots along the road frontage to unrelated individuals. The sales all occur within the same calendar year. Property owner A sells the lots to the individual buyers utilizing land contract agreements. Property owner A does not engage in any other activity under the MLOLA.

Property owner A is not required to be licensed as a mortgage loan originator because he is not originating more than three mortgage loans in the calendar year and is not considered to be engaged in the business of mortgage loan origination.

- B. Investor X purchases twenty foreclosed properties and sells each property to other individuals. The sales all occur within the same calendar year. Investor X sells the properties directly to the individual buyers utilizing land contract agreements.

Investor X is required to be licensed as a mortgage loan originator because she is engaged in the business of mortgage loan origination.

- C. Property owner Y sells the family vacation home to his child utilizing a land contract agreement.

Property owner Y is not required to be licensed as mortgage loan originator because the transaction meets one of the statutory exclusions. He is not engaged in the business of a mortgage loan originator based on this transaction.

- D. Landlord Q sells seven individual properties that she has accumulated over several years to unrelated individuals. The sales all occur within the same calendar year. Landlord Q sells the properties directly to the individual buyers utilizing land contract agreements.

Landlord Q is required to be licensed as a mortgage loan originator. Given the number of transactions in a calendar year, she is engaged in the business of mortgage loan origination. In this example, if Landlord Q decides to sell only three properties in a given calendar year, licensure as a mortgage loan originator may not be required if Landlord Q does not conduct any other activity considered to be in the business of mortgage loan origination.

- E. Builder Y sells five new homes that he built to unrelated individuals. The sales all occur within the same calendar year. Builder Y sells the properties directly to the individual buyers utilizing land contract agreements.

Builder Y is required to be licensed as a mortgage loan originator because he is engaged in the business of mortgage loan origination.

- F. Real estate salesperson Z assists the seller with the sale of the seller's personal residence. The seller is financing the sale on a land contract. Real estate salesperson Z is compensated for her real estate brokerage activities. Real estate salesperson Z is also compensated beyond customary real estate brokerage fees for her work assisting the seller in originating the land contract.

Pursuant to Section 3(1)(ii) of the MLOLA, real estate salesperson Z is required to be licensed as a mortgage loan originator because she is engaged in the business of mortgage loan origination.